

Message Text

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TRSE-00 H-02 INR-07 INT-05 JUSE-00 L-03 NSAE-00

NSC-05 NSF-02 OES-07 OMB-01 PA-02 PM-04 PRS-01

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UNCLAS SECTION 1 OF 3 USUN 2097

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E.O. 11652: N/A

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SUBJECT: LOS CONFERENCE - WEEKLY REPORT - WEEK OF JUNE

20 - 24, 1977

1. SUMMARY - WORK IN ALL COMMITTEES WAS FAIRLY ROUTINE BUT WITH RISING SENSE THAT MEANS MUST BE FOUND FOR RESOLVING OUTSTANDING PROBLEMS. COMMITTEE 1 CONCENTRATED ON INSTITUTIONAL QUESTION, COMMITTEE 2 DID SOME WORK ON ISSUES IN ADDITION TO THE KEY OUTSTANDING ISSUES AND COMMITTEE 3 CONTINUED WORK ON POLLUTION. DISPUTE SETTLEMENT DISCUSSIONS IN PLENARY HAVE REACHED THE KEY ISSUE OF EXCEPTION TO COMPULSARY SETTLEMENT. DELEGATIONS WERE ANXIOUSLY AWAITING THE OUTCOME OF CONSULTATIONS BY THE PRESIDENT AND THE COMMITTEE CHAIRMEN ON THE PROCEDURES FOR PREPARING A CONSOLIDATED TEXT OF THE CONVENTION, TO BE ISSUED DURING THE WEEK OF JULY 5. END SUMMARY.

2. COMMITTEE I (DEEP SEABEDS)

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A. MINISTER EVENSEN RETURNED FROM A WEEK'S ABSENCE, AND THE COMMITTEE I WORKING GROUP RESUMED ITS WORK UNDER HIS LEADERSHIP. FOLLOWING HIS PREVIOUS PATTERN, EVENSEN CIRCULATED HIS OWN SUGGESTED COMPROMISE TEXTS FOR ARTICLES 24, 25, 26, 27, 28 (ASSEMBLY/ COUNCIL), ARTICLES 29, 30, 31, 32 (SPECIAL COMMISSIONS), AND ARTICLE 41 AND ANNEX II

(ENTERPRISE). EVENSEN BASED MUCH OF HIS TEXTS ON DISCUSSIONS WHICH TOOK PLACE THE WEEK BEFORE UNDER COMMITTEE I CHAIRMAN ENGO, ESPECIALLY CONCERNING THE DECISION-MAKING MACHINERY. NEVERTHELESS, HIS TEXTS DID STIMULATE FURTHER DISCUSSION OF THESE ISSUES DURING THE WEEK.

B. THE DRAFT ARTICLE 27 (COUNCIL) PRODUCED INTENSE DEBATE. THE COUNCIL IS ENVISAGED AS THE PRINCIPAL EXECUTIVE ORGAN OF THE AUTHORITY AND CONSEQUENTLY WILL HAVE SUBSTANTIAL RESPONSIBILITY FOR THE IMPLEMENTATION OF THE SYSTEM OF EXPLOITATION. THE ASSEMBLY, ON THE OTHER HAND, BECAUSE OF ITS LARGE SIZE WILL PROBABLY BE CONFINED TO FORMULATING GENERAL POLICIES. THUS, THE CRITICAL INSTITUTIONAL PROBLEM CONFRONTING THE LOS CONFERENCE IS TO ESTABLISH A COUNCIL WHOSE MEMBERSHIP, ACCURATELY REFLECTS THE VARIOUS POLITICAL ECONOMIC, AND GEOGRAPHIC INTERESTS IN THE SEABED, WHOSE VOTING PROCEDURES GIVE PROPER WEIGHT TO EACH INTEREST, AND WHOSE ORGANIZATION AND MANDATE PERMIT IT TO FUNCTION AS AN EFFICIENT EXECUTIVE ORGAN.

C. EVENSEN PROPOSED A FIVE CHAMBER COUNCIL WITH 36 MEMBERS. HALF OF THE MEMBERSHIP WOULD REPRESENT FOUR "INTEREST GROUPS" -- LEADING SEABED MINING COUNTRIES, PRODUCERS, CONSUMERS AND LDCS. THE OTHER 18 MEMBERS OF THE COUNCIL WOULD FORM A FIFTH CHAMBER SELECTED TO ACHIEVE "EQUITABLE GEOGRAPHIC DISTRIBUTION" IN THE COUNCIL AS

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A WHOLE. DECISIONS ON SUBSTANTIVE ISSUES WOULD REQUIRE A TWO-THIRDS MAJORITY OF COUNCIL MEMBERS AND A SIMPLE MAJORITY IN AT LEAST FOUR OF THE FIVE CHAMBERS.

D. THE US REITERATED ITS PREFERENCE FOR ITS OWN PROPOSAL ON ARTICLE 27, WHICH PROVIDES FOR A WEIGHTED VOTING SCHEME. BUT THE US EXPRESSED WILLINGNESS TO CONSIDER EVENSEN'S FORMULATION ON ITS MERITS. CONTRARY TO STATEMENTS BY A NUMBER OF DEVELOPING COUNTRY DELEGATES, THE US FOUND THAT THE EVENSEN TEXTS GIVES HEAVY WEIGHT TO LDCS. IN FACT, THE 18/18 SPLIT BETWEEN SPECIAL INTEREST AND GEOGRAPHIC SEATS WOULD LEAD TO DEVELOPING COUNTRY CONTROL OF AT LEAST TWO-THIRDS OF THE SEATS. INTERESTINGLY, SINGAPORE REACHED THE SAME CONCLUSION IN ITS OWN CALCULATIONS OF LIKELY COUNCIL MAKEUP UNDER EVENSEN'S PROPOSAL. THE US DRAFT PROPOSAL CALLS FOR A 24/12 SPLIT BETWEEN SPECIAL INTEREST AND GEOGRAPHIC SEATS.

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E. THE STATUTE OF THE ENTERPRISE ALSO CAME UNDER CLOSE
SCRUTINY DURING THE WEEK. MANY, THOUGH NOT ALL, DEVELOPING
COUNTRIES ARGUED IN SUPPORT OF EVENSEN'S
CHARACTERIZATION OF THE ENTERPRISE AS AN ORGANIZATION
"WITHIN THE FRAMEWORK OF THE INTERNATIONAL LEGAL PERSONALITY
OF THE AUTHORITY", THUS ENTITLED TO THE SAME PRIVILEGES
AND IMMUNITIES AS THE AUTHORITY. INDUSTRIAL COUNTRIES GEN-
ERALLY ASSERTED THAT WHILE THE AUTHORITY SHOULD HAVE THE
STATUS OF AN INTERNATIONAL ORGANIZATION, THE ENTERPRISE
SHOULD BE REGARDED AS AN AUTONOMOUS BRANCH GOVERNED ESSEN-
TIALY BY COMMERCIAL LAW, NOT DIPLOMATIC CUSTOM. SOME
INDUSTRIAL COUNTRY DELEGATES CITED THE ANALOGY OF STATE
OWNED ENTERPRISE AND ITS RELATED GOVERNMENT MINISTRY. EVENSEN'S
TEXT, BY ALLOWING THE ENTERPRISE TO BE EXEMPT FROM TAXA-
TION OR OTHER EXECUTIVE AND LEGISLATIVE ACTIONS OF NATIONAL
GOVERNMENTS, IS UNACCEPTABLE TO MANY DEVELOPED OR DEVELOPING
NATIONS WHO ARE CONCERNED THAT THE ENTERPRISE
MIGHT ENJOY SUBSTANTIAL TAX ADVANTAGES OVER LAND-BASED PRO-
DUCERS.

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F. DISCUSSION OF EVENSEN'S TEXTS WAS DUE TO CONTINUED DURING

THE WEEK OF JUNE 27. HIS SUGGESTED COMPROMISE FORMULATIONS ON INSTITUTIONAL QUESTIONS COULD BECOME PART OF A COMPOSITE TEXT WHICH CONFERENCE PRESIDENT AMERASINGHE HOPES TO PRODUCE DURING THE WEEK OF JULY 5.

3. COMMITTEE II

DISCUSSIONS IN COMMITTEE II CONCENTRATED ON COMPLETION OF ATTEMPTS IN SMALL CONSULTING GROUPS CONSISTING OF MOST DIRECTLY AFFECTED STATES TO RESOLVE OUTSTANDING ISSUES CONCERNING THE LEGAL STATUS OF THE ECONOMIC ZONE, THE DEFINITION OF THE LIMIT OF THE CONTINENTAL MARGIN AND REVENUE SHARING, AND DELIMITATION OF BOUNDARIES BETWEEN OPPOSITE AND ADJACENT STATES. THESE DEBATES CONSTITUTED FOR THE MOST PART A RESTATEMENT OF NATIONAL VIEWS WITH NO SUBSTANTIALLY NEW IDEAS PUT FORWARD. AT THE END OF THE WEEK, THE COMMITTEE MOVED TO A CONSIDERATION OF MISCELLANEOUS MATTERS NOT COVERED BY THE MAJOR ISSUES LISTED ABOVE. THESE INCLUDED SUCH ITEMS AS ISLANDS, ARCHIPELAGOES, THE TERRITORIAL SEA, TRANSIT RIGHTS OF LANDLOCKED STATES AND STANDARD SETTING FOR DESIGN, CONSTRUCTION, MANNING AND EQUIPMENT IN THE TERRITORIAL SEA. THESE DISCUSSIONS HAD NOT CONCLUDED BY THE WEEK'S END.

4. COMMITTEE III (POLLUTION)

A. THE CHAIRMAN OF THE WORKING GROUPS ON PROTECTION OF THE MARINE ENVIRONMENT, VALLARTA (MEXICO), HELD DISCUSSIONS ON ARTICLE 30 (COASTAL STATE ENFORCEMENT), ARTICLE 28 (PORT STATE ENFORCEMENT) AND ARTICLE 21 (COASTAL STATE UNCLASSIFIED

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STANDARD SETTING IN THE TERRITORIAL SEA AND ECONOMIC ZONE.)

B. AN AMENDMENT PROPOSED BY CANADA TO STRENGTHEN COASTAL STATE AUTHORITY UNDER 30(5) TO INSPECT VESSELS IN CASES WHERE A VIOLATION POSES "GRAVE AND IMMINENT DANGER" OF SUBSTANTIAL DISCHARGE AND SIGNIFICANT POLLUTION, RECEIVED LITTLE SUPPORT AND SUBSTANTIAL OPPOSITION. AN AMENDMENT BY THE FRG TO GENERALLY LIMIT COASTAL STATE ENFORCEMENT POWERS IN TERRITORIAL SEA AND ECONOMIC ZONE TO DISCHARGE VIOLATIONS RECEIVED EQUAL SUPPORT FROM MARITIME STATES AND OPPOSITION FROM USA, CANADA AND SEVERAL DEVELOPING STATES.

C. AGREEMENT ON A TEXT FOR 30(7) AIMED AT AVOIDING ARREST OF VESSELS FOR POLLUTION VIOLATIONS IN THE ECONOMIC ZONE IF BONDING OR OTHER APPROPRIATE FINANCIAL SECURITY IS PROVIDED, WAS AGREED AT THE LEVEL OF THE PRIVATE NEGOTIATIONS.

TIATING GROUP.

D. DISCUSSION ON ARTICLE 28 (PORT STATE ENFORCEMENT)
CENTERED AROUND THE ISSUE OF WHETHER OR NOT PORT STATE
JURISDICTION SHOULD EXTEND TO INTERNATIONAL DISCHARGE
STANDARD VIOLATIONS OCCURING BEYOND 200 MILES. AMEND-
MENTS TO REQUIRE FLAG STATE CONSENT FOR PORT STATE PRO-
SECUTIONS OF DISCHARGE VIOLATIONS BEYOND 200 MILES WERE
SUPPORTED BY THE OTHER MARITIME STATES AND OPPOSED BY US,
CANADA AND MANY DEVELOPING STATES. A US AMENDMENT TO IN-
CREASE PORT STATE COMPETENCE BY ALLOWING PROSECUTION FOR
DISCHARGE VIOLATIONS IN OTHER STATES "ECONOMIC ZONES, RE-
CEIVED SOME SUPPORT BUT SUBSTANTIAL OPPOSITION.
PRESENT TEXT REQUIRES REQUEST FROM COASTAL STATE IN THAT
SITUATION.

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E. THROUGHOUT THE WEEK THE OTHER MARITIME STATES PROCEDURALLY
PREVENTED DISCUSSION OF US AMENDMENTS TO ARTICLE 21(3)
(COASTAL STATE STANDARD SETTING IN THE TERRITORIAL SEA).
GENERAL DISCUSSION ELICITED ONLY LIMITED SUPPORT FOR IN-
CREASED COSTAL STATE COMPETANCE OVER DESIGN, CONSTRUCTION,
MANNING OF EQUIPMENT OF FOREIGN VESSELS IN THE TERRITORIAL
SEA AND SLIGHTLY MORE SUPPORT FOR SUCH COMPETENCE OVER OTHER
MATTERS REGULATED BY GENERALLY ACCEPTED RULES AND STANDARDS.

F. DISCUSSION OF COASTAL STATE STANDARD SETTING IN THE ECONOMIC ZONE (ARTICLE 21(4)) WAS INCONCLUSIVE WITH MOST STATES SUPPORTING THE PRESENT WORKING OF THE RSNT WHICH LIMITS SUCH COMPETENCE TO THAT NECESSARY TO CARRY OUT ENFORCEMENT ACTION.

5. PART IV (DISPUTE SETTLEMENT)

THE KEY TO THE GENERAL AGREEMENT ON DISPUTE SETTLEMENT IS AGREEMENT ON EXCEPTIONS TO COMPULSARY SETTLEMENT
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CONTAINED IN ARTICLES 17, AND 18.

A. ARTICLE 18 (OPTIONAL EXCEPTIONS) WAS DISCUSSED DURING THE THREE INFORMAL PLENARIES ON PART IV (DISPUTE SETTLEMENT) HELD DURING THE WEEK OF 20-24 JUNE, 1977. THE PRESIDENT OFFERED A NUMBER OF AMENDMENTS TO 18(1). THE PURPOSE OF THE AMENDMENTS TO TO 1(A) (DELIMITATION OF BOUNDARIES). WAS TWO-FOLD: TO ENSURE THAT THE PROVISIO CLAUSE LED TO AN ACCEPTABLE RESIDUARY PROCEDURE ENTAILING A BINDING DECISION; AND TO ACCOMODATE OBJECTIONS TO THIS BY EXCLUDING THE DETERMINATION OF ANY CLAIM TO SOVEREIGNTY WITH RESPECT TO CONTINENTAL OR INSULAR LAND TERRITORY. THE AMENDMENT TO (1)(B) (THE MILITARY EXCEPTION) WAS DESIGNED TO TREAT LAW ENFORCEMENT ACTIVITIES BY COASTAL STATES ON A PARITY WITH MILITARY ACTIVITIES, BUT TO LIMIT THE EXTENT OF THIS EXCEPTION BY CROSSREFERENCE TO THE SPECIFIC EXCEPTIONS IN ARTICLE 17. THE AMENDMENT TO 1(C), WAS INTENDED TO OBIVIATE THE NEED FOR A SUBSTANTIVE DECISION BY THE SECURITY COUNCIL THAT PROCEEDINGS UNDER THE LOS CONVENTION INTERFERED WITH THE EXERCISE OF ITS FUNCTION, AS SUCH DECISION IS SUBJECT TO VETO; INSTEAD WHENEVER THE SECURITY COUNCIL IS SEIZED OF THE MATTER, THIS WOULD AUTOMATICALLY EXCLUDE IT FROM INTERNATIONAL ADJUDICATION, UNLESS THE COUNCIL REMOVES THE ITEM FROM THE AGENDA OR CALLS UPON THE PARTIES TO REFER IT TO SUCH ADJUDICATIONS.

B. THE SOVIET UNION STRONGLY SUPPORTED THE DELETION OF THE PROVISIO TO (1)(A) REQUIRING DISPUTE SETTLEMENT IN SOME FORUM OF MARITIME BOUNDARIES, AND SUPPORTED THE PRESIDENT'S AMENDMENT RELATING TO MIXED LAND/SEA DISPUTES, WHILE JAPAN INSISTED ON THE DANGER OF THE LATTER AMENDMENT. SEVERAL SPEAKERS FROM THE GROUP OF 77 URGED THE DELETION OF (1)(A) AND (1)(B) (I.E., NO EXCEPTIONS PERMITTED AT ALL.)
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OPINIONS DIFFERED AS TO THE ADVISABILITY OF RETAINING (1)(C), GIVEN THAT ITS OPPONENTS ARGUED THAT IN VIEW OF THE SUPREMACY CLAUSE IN ARTICLE 103 OF THE UN CHARTER THIS PROVISION WAS NOT NECESSARY. THE US SUPPORTED THE AMENDMENTS OF THE CHAIRMAN TO 1(A), OFFERED AN AMENDMENT THERETO WHICH WAS IN SUBSTANCE INCORPORATED IN THE CHAIRMEN'S REVISED AMENDMENT, INDICATED THE NEED TO CLARIFY THE INTERRELATIONSHIP BETWEEN ARTICLES 17 AND 18, ESPECIALLY WITH RESPECT TO THE LAW ENFORCEMENT ACTIVITIES IN THE PROVISIO IN 18(1)(B), AND OFFERED AN AMENDMENT TO (1)(C). THE DEBATE WAS ACTIVE, CONSTRUCTIVE, AND LOW-KEY. ARTICLE 17 WILL BE DISCUSSED COMMENCING MONDAY, 27 JUNE.

6. CONGRESSIONAL VISITS

CONGRESSMAN DONALD FRASER (D-MINN.) VISITED THE CONFERENCE JUNE 20. NOTABLY, FRASER MET WITH ALVARO DE SOTO OF PERU AND ALAN BEESLEY OF CANADA ON COMMITTEE I ISSUES. CONGRESSMAN GEORGE BROWN (D-CALIFORNIA) OBSERVED LOS SESSIONS ON JUNE 23. BROWN CONCENTRATED ON THE MARINE SCIENTIFIC RESEARCH ISSUE IN DISCUSSIONS WITH VARIOUS FOREIGN DELEGATES.
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